

**FILED**

**JUN 19 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

STEVEN ALLEN BUTLER,

Petitioner - Appellant,

v.

DERRAL G. ADAMS, Warden,

Respondent - Appellee.

No. 05-15794

D.C. No. CV-04-01049-EJG

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Eastern District of California  
Edward J. Garcia, District Judge, Presiding

Submitted June 12, 2006<sup>\*\*</sup>

Before: KLEINFELD, PAEZ, and BERZON, Circuit Judges.

California state prisoner Steven Allen Butler appeals pro se from the district court's order denying his 28 U.S.C. § 2254 habeas petition, which challenges his 1998 conviction and sentence for lewd and lascivious conduct with a minor. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we affirm.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Butler contends that the district court erred in dismissing his petition as untimely. Specifically, he contends that he is entitled to statutory tolling from the filing of his first state post-conviction petition in 2000 until the denial of his last post-conviction petition in 2003. The Anti-Terrorism and Effective Death Penalty Act provides for “statutory tolling” of its one-year statute of limitations while a “properly filed” petition for state post-conviction collateral review is “pending.” 28 U.S.C. § 2244(d)(2). Here, the limitations period ran for 10 months before Butler filed his first state post-conviction petition on February 29, 2000. Even if we assume that the limitations period was tolled for the entirety of time from the filing of Butler’s first post-conviction petition until the California Supreme Court rejected his last state petition, Butler’s federal petition would still be untimely, because he did not file it until 5 months later. *See id.*; *see also Gaston v. Palmer*, No. 01-56367, 2006 WL 1215382, at \*2 (9th Cir. May 8, 2006) (finding intervals of 10, 15, and 18 months unreasonable and concluding that interval tolling did not make petition timely).

Butler also contends that he is entitled to equitable tolling. Because there were no extraordinary circumstances beyond Butler’s control that made it impossible to file his petition on time, his petition is not saved by equitable tolling. *See Miranda v. Castro*, 292 F.3d 1063, 1066 (9th Cir. 2002).

Finally, Butler seeks to expand the certificate of appealability (“COA”). We decline to expand the COA because Butler fails to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

**AFFIRMED.**